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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/819,201	03/28/2001	Paul F. Connelly JR.	PFC 00422	2925
7590 07/09/2004				
JAMES RAY & ASSOCIATES 2640 Pitcairn Road Monroeville, PA 15146			EXAMINER WEEKS, GLORIA R	
			ART UNIT 3721	PAPER NUMBER 11

DATE MAILED: 07/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/819,201

Applicant(s)

CONNELLY, PAUL F.

Examiner

Gloria R Weeks

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 March 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

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***Response to Amendment***

1. This action is in response to Applicants' amendment received on August 14, 2002.

***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference character(s) mentioned in the description: impact surface "32". Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 recites the limitation "said plate" in line 3. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

6. Claims 1-5, 9, 14-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Ubbink (USPN 5,029,651).

In reference to claim 1-5, 9, 14-17, Ubbink discloses a driver (2), the driver (2) comprising: a body portion in the form of pipe (6) having an elongated cavity for receiving an elongated object (4), the pipe being welded to an impact member having an upper surface (28) of a greater area than a lower surface (29) forming a blind end of the elongated cavity (6); and two elongated handles (30) attached to the impact member and longitudinally spaced from the pipe (6).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 6-8, 10, 11, and 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ubbink (USPN 5,029,651).

Regarding claims 6-8, 10, 11, and 18-21, Ubbink discloses a driver having a body in the form of a pipe (6), an impact member (28), and a pair of handles gusset welded (figure 6) to the body, but does not disclose the handles welded to the impact member. It would have been an obvious matter of design choice to weld the handles to the impact member, since applicant has not disclosed that handles being welded to the impact member as solve any stated problem or is for any particular purpose and it appears that the invention would perform equally well with handles welded to the body of the driver, as suggested by Applicant (page 9, lines 19-20) and disclosed by Ubbink.

9. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ubbink (USPN 5,029,651) as applied to claim 10 above, and further in view of Deike (USPN 3,735,822).

With respect to claim 12 and its limitations as stated above, Ubbink discloses a driver (2) having elongated handles (30) but does not disclose elongated handles (30) with hand grips. Deike teaches a driver having elongated handles (67, 70) with hand grips (71, 72). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the handles of the driver of Ubbink to include the hand grips of Deike for the purpose of improving once grasp on the handles of the driver during operation (Deike-column 6, lines 8-10).

10. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ubbink (USPN 5,029,651) in view of Amicangelo (USPN 6,364,031).

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Ubbink discloses a driver (2) having a pipe body (6) for inserting an elongated object (4, 8) into the earth (figures 7) but does not disclose any means for removing earth from the pipe (6). Amicangelo teaches a driver (10) having a pipe body (40) and an impact member (42, 44), with a slot (46) in the pipe (40) and remote from the impact member (42, 44). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the driver of Ubbink to include the slot of Amicangelo the purpose of facilitating the removal of an elongated article that has been driven into the earth (Amicangelo-column 6, lines 33).

### ***Response to Arguments***

11. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the

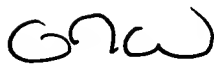
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advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R Weeks whose telephone number is (703) 605-4211. The examiner can normally be reached on 6:30 am - 5:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 305-2187. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7769 for regular communications and (703) 308-7769 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1789.



grw  
June 30, 2004

Gloria R Weeks  
Examiner  
Art Unit 3721



SCOTT A. SMITH  
PRIMARY EXAMINER